

Introduced by Senator Galgiani

February 21, 2014

An act to amend Sections 1170 and 3550 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1284, as introduced, Galgiani. Parole: medical parole: compassionate release.

Existing law provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority. Existing law requires that a prisoner who is found to be permanently medically incapacitated, as specified, be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. Existing law exempts a prisoner sentenced to death, a prisoner sentenced to life without the possibility of parole, and a prisoner who is serving a sentence for which parole is prohibited by initiative statute, from medical parole eligibility.

Existing law authorizes a court to resentence or recall the sentence of a prisoner if the court finds that the prisoner is terminally ill, as specified, or the prisoner is permanently medically incapacitated, as specified, and, in either case, the conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety. Existing law exempts a prisoner sentenced to death or a term of life without the possibility of parole from eligibility for compassionate release pursuant to these provisions

This bill would additionally exempt from medical parole eligibility and compassionate release eligibility a prisoner who was convicted of the murder of a peace officer, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code, as amended by
2 Section 5 of Chapter 508 of the Statutes of 2013, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short
24 remaining term of commitment and a release date that would allow
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute
27 for a person convicted of a public offense is a term of imprisonment
28 in the state prison of any specification of three time periods, the
29 court shall sentence the defendant to one of the terms of
30 imprisonment specified unless the convicted person is given any
31 other disposition provided by law, including a fine, jail, probation,
32 or the suspension of imposition or execution of sentence or is
33 sentenced pursuant to subdivision (b) of Section 1168 because he
34 or she had committed his or her crime prior to July 1, 1977. In
35 sentencing the convicted person, the court shall apply the

1 sentencing rules of the Judicial Council. The court, unless it
2 determines that there are circumstances in mitigation of the
3 punishment prescribed, shall also impose any other term that it is
4 required by law to impose as an additional term. Nothing in this
5 article shall affect any provision of law that imposes the death
6 penalty, that authorizes or restricts the granting of probation or
7 suspending the execution or imposition of sentence, or expressly
8 provides for imprisonment in the state prison for life, except as
9 provided in paragraph (2) of subdivision (d). In any case in which
10 the amount of preimprisonment credit under Section 2900.5 or any
11 other provision of law is equal to or exceeds any sentence imposed
12 pursuant to this chapter, the entire sentence shall be deemed to
13 have been served and the defendant shall not be actually delivered
14 to the custody of the secretary. The court shall advise the defendant
15 that he or she shall serve a period of parole and order the defendant
16 to report to the parole office closest to the defendant's last legal
17 residence, unless the in-custody credits equal the total sentence,
18 including both confinement time and the period of parole. The
19 sentence shall be deemed a separate prior prison term under Section
20 667.5, and a copy of the judgment and other necessary
21 documentation shall be forwarded to the secretary.

22 (b) When a judgment of imprisonment is to be imposed and the
23 statute specifies three possible terms, the choice of the appropriate
24 term shall rest within the sound discretion of the court. At least
25 four days prior to the time set for imposition of judgment, either
26 party or the victim, or the family of the victim if the victim is
27 deceased, may submit a statement in aggravation or mitigation. In
28 determining the appropriate term, the court may consider the record
29 in the case, the probation officer's report, other reports, including
30 reports received pursuant to Section 1203.03, and statements in
31 aggravation or mitigation submitted by the prosecution, the
32 defendant, or the victim, or the family of the victim if the victim
33 is deceased, and any further evidence introduced at the sentencing
34 hearing. The court shall select the term which, in the court's
35 discretion, best serves the interests of justice. The court shall set
36 forth on the record the reasons for imposing the term selected and
37 the court may not impose an upper term by using the fact of any
38 enhancement upon which sentence is imposed under any provision
39 of law. A term of imprisonment shall not be specified if imposition
40 of sentence is suspended.

1 (c) The court shall state the reasons for its sentence choice on
2 the record at the time of sentencing. The court shall also inform
3 the defendant that as part of the sentence after expiration of the
4 term he or she may be on parole for a period as provided in Section
5 3000.

6 (d) (1) When a defendant subject to this section or subdivision
7 (b) of Section 1168 has been sentenced to be imprisoned in the
8 state prison and has been committed to the custody of the secretary,
9 the court may, within 120 days of the date of commitment on its
10 own motion, or at any time upon the recommendation of the
11 secretary or the Board of Parole Hearings, recall the sentence and
12 commitment previously ordered and resentence the defendant in
13 the same manner as if he or she had not previously been sentenced,
14 provided the new sentence, if any, is no greater than the initial
15 sentence. The court resentencing under this subdivision shall apply
16 the sentencing rules of the Judicial Council so as to eliminate
17 disparity of sentences and to promote uniformity of sentencing.
18 Credit shall be given for time served.

19 (2) (A) (i) When a defendant who was under 18 years of age
20 at the time of the commission of the offense for which the
21 defendant was sentenced to imprisonment for life without the
22 possibility of parole has served at least 15 years of that sentence,
23 the defendant may submit to the sentencing court a petition for
24 recall and resentencing.

25 (ii) Notwithstanding clause (i), this paragraph shall not apply
26 to defendants sentenced to life without parole for an offense where
27 the defendant tortured, as described in Section 206, his or her
28 victim or the victim was a public safety official, including any law
29 enforcement personnel mentioned in Chapter 4.5 (commencing
30 with Section 830) of Title 3, or any firefighter as described in
31 Section 245.1, as well as any other officer in any segment of law
32 enforcement who is employed by the federal government, the state,
33 or any of its political subdivisions.

34 (B) The defendant shall file the original petition with the
35 sentencing court. A copy of the petition shall be served on the
36 agency that prosecuted the case. The petition shall include the
37 defendant's statement that he or she was under 18 years of age at
38 the time of the crime and was sentenced to life in prison without
39 the possibility of parole, the defendant's statement describing his

1 or her remorse and work towards rehabilitation, and the defendant's
2 statement that one of the following is true:

3 (i) The defendant was convicted pursuant to felony murder or
4 aiding and abetting murder provisions of law.

5 (ii) The defendant does not have juvenile felony adjudications
6 for assault or other felony crimes with a significant potential for
7 personal harm to victims prior to the offense for which the sentence
8 is being considered for recall.

9 (iii) The defendant committed the offense with at least one adult
10 codefendant.

11 (iv) The defendant has performed acts that tend to indicate
12 rehabilitation or the potential for rehabilitation, including, but not
13 limited to, availing himself or herself of rehabilitative, educational,
14 or vocational programs, if those programs have been available at
15 his or her classification level and facility, using self-study for
16 self-improvement, or showing evidence of remorse.

17 (C) If any of the information required in subparagraph (B) is
18 missing from the petition, or if proof of service on the prosecuting
19 agency is not provided, the court shall return the petition to the
20 defendant and advise the defendant that the matter cannot be
21 considered without the missing information.

22 (D) A reply to the petition, if any, shall be filed with the court
23 within 60 days of the date on which the prosecuting agency was
24 served with the petition, unless a continuance is granted for good
25 cause.

26 (E) If the court finds by a preponderance of the evidence that
27 the statements in the petition are true, the court shall hold a hearing
28 to consider whether to recall the sentence and commitment
29 previously ordered and to resentence the defendant in the same
30 manner as if the defendant had not previously been sentenced,
31 provided that the new sentence, if any, is not greater than the initial
32 sentence. Victims, or victim family members if the victim is
33 deceased, shall retain the rights to participate in the hearing.

34 (F) The factors that the court may consider when determining
35 whether to recall and resentence include, but are not limited to,
36 the following:

37 (i) The defendant was convicted pursuant to felony murder or
38 aiding and abetting murder provisions of law.

39 (ii) The defendant does not have juvenile felony adjudications
40 for assault or other felony crimes with a significant potential for

1 personal harm to victims prior to the offense for which the sentence
2 is being considered for recall.

3 (iii) The defendant committed the offense with at least one adult
4 codefendant.

5 (iv) Prior to the offense for which the sentence is being
6 considered for recall, the defendant had insufficient adult support
7 or supervision and had suffered from psychological or physical
8 trauma, or significant stress.

9 (v) The defendant suffers from cognitive limitations due to
10 mental illness, developmental disabilities, or other factors that did
11 not constitute a defense, but influenced the defendant's
12 involvement in the offense.

13 (vi) The defendant has performed acts that tend to indicate
14 rehabilitation or the potential for rehabilitation, including, but not
15 limited to, availing himself or herself of rehabilitative, educational,
16 or vocational programs, if those programs have been available at
17 his or her classification level and facility, using self-study for
18 self-improvement, or showing evidence of remorse.

19 (vii) The defendant has maintained family ties or connections
20 with others through letter writing, calls, or visits, or has eliminated
21 contact with individuals outside of prison who are currently
22 involved with crime.

23 (viii) The defendant has had no disciplinary actions for violent
24 activities in the last five years in which the defendant was
25 determined to be the aggressor.

26 (G) The court shall have the discretion to recall the sentence
27 and commitment previously ordered and to resentence the
28 defendant in the same manner as if the defendant had not
29 previously been sentenced, provided that the new sentence, if any,
30 is not greater than the initial sentence. The discretion of the court
31 shall be exercised in consideration of the criteria in subparagraph
32 (B). Victims, or victim family members if the victim is deceased,
33 shall be notified of the resentencing hearing and shall retain their
34 rights to participate in the hearing.

35 (H) If the sentence is not recalled, the defendant may submit
36 another petition for recall and resentencing to the sentencing court
37 when the defendant has been committed to the custody of the
38 department for at least 20 years. If recall and resentencing is not
39 granted under that petition, the defendant may file another petition
40 after having served 24 years. The final petition may be submitted,

1 and the response to that petition shall be determined, during the
2 25th year of the defendant's sentence.

3 (I) In addition to the criteria in subparagraph (F), the court may
4 consider any other criteria that the court deems relevant to its
5 decision, so long as the court identifies them on the record,
6 provides a statement of reasons for adopting them, and states why
7 the defendant does or does not satisfy the criteria.

8 (J) This subdivision shall have retroactive application.

9 (e) (1) Notwithstanding any other law and consistent with
10 paragraph (1) of subdivision (a), if the secretary or the Board of
11 Parole Hearings or both determine that a prisoner satisfies the
12 criteria set forth in paragraph (2), the secretary or the board may
13 recommend to the court that the prisoner's sentence be recalled.

14 (2) (A) The court shall have the discretion to resentence or
15 recall if the court finds that the facts described in ~~subparagraphs~~
16 ~~(A) and (B) or subparagraphs (B) and (C) clauses (i) and (ii) or~~
17 ~~clauses (ii) and (iii) exist:~~

18 ~~(A)~~

19 (i) The prisoner is terminally ill with an incurable condition
20 caused by an illness or disease that would produce death within
21 six months, as determined by a physician employed by the
22 department.

23 ~~(B)~~

24 (ii) The conditions under which the prisoner would be released
25 or receive treatment do not pose a threat to public safety.

26 ~~(C)~~

27 (iii) The prisoner is permanently medically incapacitated with
28 a medical condition that renders him or her permanently unable
29 to perform activities of basic daily living, and results in the prisoner
30 requiring 24-hour total care, including, but not limited to, coma,
31 persistent vegetative state, brain death, ventilator-dependency, loss
32 of control of muscular or neurological function, and that
33 incapacitation did not exist at the time of the original sentencing.

34 ~~The Board of Parole Hearings shall make findings pursuant to~~
35 ~~this subdivision before making a recommendation for resentence~~
36 ~~or recall to the court. This~~

37 (B) This subdivision does not apply to ~~a~~ the following:

38 (i) A prisoner sentenced to death or a term of life without the
39 possibility of parole.

1 (ii) (I) A prisoner who was convicted of murder if the victim
2 was a peace officer, as defined in Section 830.1, 830.2, 830.3,
3 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4,
4 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed while
5 engaged in the performance of his or her duties, and the individual
6 knew, or reasonably should have known, that the victim was a
7 peace officer engaged in the performance of his or her duties.

8 (II) The victim was a peace officer, as defined in any of the
9 sections enumerated in subclause (I), or had been a peace officer,
10 as defined in any of those sections, and was intentionally murdered
11 in retaliation for the performance of his or her official duties.

12 (III) If the court determines that the application of this clause
13 violates the *ex post facto* clauses of the United States Constitution
14 or the California Constitution, the court shall only enforce its
15 provisions prospectively.

16 (C) The Board of Parole Hearings shall make findings pursuant
17 to this subdivision before making a recommendation for resentence
18 or recall to the court.

19 (3) Within 10 days of receipt of a positive recommendation by
20 the secretary or the board, the court shall hold a hearing to consider
21 whether the prisoner's sentence should be recalled.

22 (4) Any physician employed by the department who determines
23 that a prisoner has six months or less to live shall notify the chief
24 medical officer of the prognosis. If the chief medical officer
25 concurs with the prognosis, he or she shall notify the warden.
26 Within 48 hours of receiving notification, the warden or the
27 warden's representative shall notify the prisoner of the recall and
28 resentencing procedures, and shall arrange for the prisoner to
29 designate a family member or other outside agent to be notified
30 as to the prisoner's medical condition and prognosis, and as to the
31 recall and resentencing procedures. If the inmate is deemed
32 mentally unfit, the warden or the warden's representative shall
33 contact the inmate's emergency contact and provide the information
34 described in paragraph (2).

35 (5) The warden or the warden's representative shall provide the
36 prisoner and his or her family member, agent, or emergency
37 contact, as described in paragraph (4), updated information
38 throughout the recall and resentencing process with regard to the
39 prisoner's medical condition and the status of the prisoner's recall
40 and resentencing proceedings.

1 (6) Notwithstanding any other provisions of this section, the
2 prisoner or his or her family member or designee may
3 independently request consideration for recall and resentencing
4 by contacting the chief medical officer at the prison or the
5 secretary. Upon receipt of the request, the chief medical officer
6 and the warden or the warden's representative shall follow the
7 procedures described in paragraph (4). If the secretary determines
8 that the prisoner satisfies the criteria set forth in paragraph (2), the
9 secretary or board may recommend to the court that the prisoner's
10 sentence be recalled. The secretary shall submit a recommendation
11 for release within 30 days in the case of inmates sentenced to
12 determinate terms and, in the case of inmates sentenced to
13 indeterminate terms, the secretary shall make a recommendation
14 to the Board of Parole Hearings with respect to the inmates who
15 have applied under this section. The board shall consider this
16 information and make an independent judgment pursuant to
17 paragraph (2) and make findings related thereto before rejecting
18 the request or making a recommendation to the court. This action
19 shall be taken at the next lawfully noticed board meeting.

20 (7) Any recommendation for recall submitted to the court by
21 the secretary or the Board of Parole Hearings shall include one or
22 more medical evaluations, a postrelease plan, and findings pursuant
23 to paragraph (2).

24 (8) If possible, the matter shall be heard before the same judge
25 of the court who sentenced the prisoner.

26 (9) If the court grants the recall and resentencing application,
27 the prisoner shall be released by the department within 48 hours
28 of receipt of the court's order, unless a longer time period is agreed
29 to by the inmate. At the time of release, the warden or the warden's
30 representative shall ensure that the prisoner has each of the
31 following in his or her possession: a discharge medical summary,
32 full medical records, state identification, parole medications, and
33 all property belonging to the prisoner. After discharge, any
34 additional records shall be sent to the prisoner's forwarding
35 address.

36 (10) The secretary shall issue a directive to medical and
37 correctional staff employed by the department that details the
38 guidelines and procedures for initiating a recall and resentencing
39 procedure. The directive shall clearly state that any prisoner who
40 is given a prognosis of six months or less to live is eligible for

1 recall and resentencing consideration, and that recall and
2 resentencing procedures shall be initiated upon that prognosis.

3 (f) Notwithstanding any other provision of this section, for
4 purposes of paragraph (3) of subdivision (h), any allegation that
5 a defendant is eligible for state prison due to a prior or current
6 conviction, sentence enhancement, or because he or she is required
7 to register as a sex offender shall not be subject to dismissal
8 pursuant to Section 1385.

9 (g) A sentence to state prison for a determinate term for which
10 only one term is specified, is a sentence to state prison under this
11 section.

12 (h) (1) Except as provided in paragraph (3), a felony punishable
13 pursuant to this subdivision where the term is not specified in the
14 underlying offense shall be punishable by a term of imprisonment
15 in a county jail for 16 months, or two or three years.

16 (2) Except as provided in paragraph (3), a felony punishable
17 pursuant to this subdivision shall be punishable by imprisonment
18 in a county jail for the term described in the underlying offense.

19 (3) Notwithstanding paragraphs (1) and (2), where the defendant
20 (A) has a prior or current felony conviction for a serious felony
21 described in subdivision (c) of Section 1192.7 or a prior or current
22 conviction for a violent felony described in subdivision (c) of
23 Section 667.5, (B) has a prior felony conviction in another
24 jurisdiction for an offense that has all the elements of a serious
25 felony described in subdivision (c) of Section 1192.7 or a violent
26 felony described in subdivision (c) of Section 667.5, (C) is required
27 to register as a sex offender pursuant to Chapter 5.5 (commencing
28 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
29 and as part of the sentence an enhancement pursuant to Section
30 186.11 is imposed, an executed sentence for a felony punishable
31 pursuant to this subdivision shall be served in state prison.

32 (4) Nothing in this subdivision shall be construed to prevent
33 other dispositions authorized by law, including pretrial diversion,
34 deferred entry of judgment, or an order granting probation pursuant
35 to Section 1203.1.

36 (5) The court, when imposing a sentence pursuant to paragraph
37 (1) or (2) of this subdivision, may commit the defendant to county
38 jail as follows:

39 (A) For a full term in custody as determined in accordance with
40 the applicable sentencing law.

1 (B) (i) For a term as determined in accordance with the
2 applicable sentencing law, but suspend execution of a concluding
3 portion of the term selected in the court's discretion, during which
4 time the defendant shall be supervised by the county probation
5 officer in accordance with the terms, conditions, and procedures
6 generally applicable to persons placed on probation, for the
7 remaining unserved portion of the sentence imposed by the court.
8 The period of supervision shall be mandatory, and may not be
9 earlier terminated except by court order. Any proceeding to revoke
10 or modify mandatory supervision under this subparagraph shall
11 be conducted pursuant to either subdivisions (a) and (b) of Section
12 1203.2 or Section 1203.3. During the period when the defendant
13 is under such supervision, unless in actual custody related to the
14 sentence imposed by the court, the defendant shall be entitled to
15 only actual time credit against the term of imprisonment imposed
16 by the court. Any time period which is suspended because a person
17 has absconded shall not be credited toward the period of
18 supervision.

19 (ii) The portion of a defendant's sentenced term during which
20 time he or she is supervised by the county probation officer
21 pursuant to this subparagraph shall be known as mandatory
22 supervision.

23 (6) The sentencing changes made by the act that added this
24 subdivision shall be applied prospectively to any person sentenced
25 on or after October 1, 2011.

26 (i) This section shall remain in effect only until January 1, 2017,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before that date, deletes or extends that date.

29 SEC. 2. Section 1170 of the Penal Code, as amended by Section
30 6 of Chapter 508 of the Statutes of 2013, is amended to read:

31 1170. (a) (1) The Legislature finds and declares that the
32 purpose of imprisonment for crime is punishment. This purpose
33 is best served by terms proportionate to the seriousness of the
34 offense with provision for uniformity in the sentences of offenders
35 committing the same offense under similar circumstances. The
36 Legislature further finds and declares that the elimination of
37 disparity and the provision of uniformity of sentences can best be
38 achieved by determinate sentences fixed by statute in proportion
39 to the seriousness of the offense as determined by the Legislature
40 to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in paragraph (2) of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The

1 sentence shall be deemed a separate prior prison term under Section
2 667.5, and a copy of the judgment and other necessary
3 documentation shall be forwarded to the secretary.

4 (b) When a judgment of imprisonment is to be imposed and the
5 statute specifies three possible terms, the court shall order
6 imposition of the middle term, unless there are circumstances in
7 aggravation or mitigation of the crime. At least four days prior to
8 the time set for imposition of judgment, either party or the victim,
9 or the family of the victim if the victim is deceased, may submit
10 a statement in aggravation or mitigation to dispute facts in the
11 record or the probation officer's report, or to present additional
12 facts. In determining whether there are circumstances that justify
13 imposition of the upper or lower term, the court may consider the
14 record in the case, the probation officer's report, other reports,
15 including reports received pursuant to Section 1203.03, and
16 statements in aggravation or mitigation submitted by the
17 prosecution, the defendant, or the victim, or the family of the victim
18 if the victim is deceased, and any further evidence introduced at
19 the sentencing hearing. The court shall set forth on the record the
20 facts and reasons for imposing the upper or lower term. The court
21 may not impose an upper term by using the fact of any
22 enhancement upon which sentence is imposed under any provision
23 of law. A term of imprisonment shall not be specified if imposition
24 of sentence is suspended.

25 (c) The court shall state the reasons for its sentence choice on
26 the record at the time of sentencing. The court shall also inform
27 the defendant that as part of the sentence after expiration of the
28 term he or she may be on parole for a period as provided in Section
29 3000.

30 (d) (1) When a defendant subject to this section or subdivision
31 (b) of Section 1168 has been sentenced to be imprisoned in the
32 state prison and has been committed to the custody of the secretary,
33 the court may, within 120 days of the date of commitment on its
34 own motion, or at any time upon the recommendation of the
35 secretary or the Board of Parole Hearings, recall the sentence and
36 commitment previously ordered and resentence the defendant in
37 the same manner as if he or she had not previously been sentenced,
38 provided the new sentence, if any, is no greater than the initial
39 sentence. The court resentencing under this subdivision shall apply
40 the sentencing rules of the Judicial Council so as to eliminate

1 disparity of sentences and to promote uniformity of sentencing.
2 Credit shall be given for time served.

3 (2) (A) (i) When a defendant who was under 18 years of age
4 at the time of the commission of the offense for which the
5 defendant was sentenced to imprisonment for life without the
6 possibility of parole has served at least 15 years of that sentence,
7 the defendant may submit to the sentencing court a petition for
8 recall and resentencing.

9 (ii) Notwithstanding clause (i), this paragraph shall not apply
10 to defendants sentenced to life without parole for an offense where
11 the defendant tortured, as described in Section 206, his or her
12 victim or the victim was a public safety official, including any law
13 enforcement personnel mentioned in Chapter 4.5 (commencing
14 with Section 830) of Title 3, or any firefighter as described in
15 Section 245.1, as well as any other officer in any segment of law
16 enforcement who is employed by the federal government, the state,
17 or any of its political subdivisions.

18 (B) The defendant shall file the original petition with the
19 sentencing court. A copy of the petition shall be served on the
20 agency that prosecuted the case. The petition shall include the
21 defendant's statement that he or she was under 18 years of age at
22 the time of the crime and was sentenced to life in prison without
23 the possibility of parole, the defendant's statement describing his
24 or her remorse and work towards rehabilitation, and the defendant's
25 statement that one of the following is true:

26 (i) The defendant was convicted pursuant to felony murder or
27 aiding and abetting murder provisions of law.

28 (ii) The defendant does not have juvenile felony adjudications
29 for assault or other felony crimes with a significant potential for
30 personal harm to victims prior to the offense for which the sentence
31 is being considered for recall.

32 (iii) The defendant committed the offense with at least one adult
33 codefendant.

34 (iv) The defendant has performed acts that tend to indicate
35 rehabilitation or the potential for rehabilitation, including, but not
36 limited to, availing himself or herself of rehabilitative, educational,
37 or vocational programs, if those programs have been available at
38 his or her classification level and facility, using self-study for
39 self-improvement, or showing evidence of remorse.

1 (C) If any of the information required in subparagraph (B) is
2 missing from the petition, or if proof of service on the prosecuting
3 agency is not provided, the court shall return the petition to the
4 defendant and advise the defendant that the matter cannot be
5 considered without the missing information.

6 (D) A reply to the petition, if any, shall be filed with the court
7 within 60 days of the date on which the prosecuting agency was
8 served with the petition, unless a continuance is granted for good
9 cause.

10 (E) If the court finds by a preponderance of the evidence that
11 the statements in the petition are true, the court shall hold a hearing
12 to consider whether to recall the sentence and commitment
13 previously ordered and to resentence the defendant in the same
14 manner as if the defendant had not previously been sentenced,
15 provided that the new sentence, if any, is not greater than the initial
16 sentence. Victims, or victim family members if the victim is
17 deceased, shall retain the rights to participate in the hearing.

18 (F) The factors that the court may consider when determining
19 whether to recall and resentence include, but are not limited to,
20 the following:

21 (i) The defendant was convicted pursuant to felony murder or
22 aiding and abetting murder provisions of law.

23 (ii) The defendant does not have juvenile felony adjudications
24 for assault or other felony crimes with a significant potential for
25 personal harm to victims prior to the offense for which the sentence
26 is being considered for recall.

27 (iii) The defendant committed the offense with at least one adult
28 codefendant.

29 (iv) Prior to the offense for which the sentence is being
30 considered for recall, the defendant had insufficient adult support
31 or supervision and had suffered from psychological or physical
32 trauma, or significant stress.

33 (v) The defendant suffers from cognitive limitations due to
34 mental illness, developmental disabilities, or other factors that did
35 not constitute a defense, but influenced the defendant's
36 involvement in the offense.

37 (vi) The defendant has performed acts that tend to indicate
38 rehabilitation or the potential for rehabilitation, including, but not
39 limited to, availing himself or herself of rehabilitative, educational,
40 or vocational programs, if those programs have been available at

1 his or her classification level and facility, using self-study for
2 self-improvement, or showing evidence of remorse.

3 (vii) The defendant has maintained family ties or connections
4 with others through letter writing, calls, or visits, or has eliminated
5 contact with individuals outside of prison who are currently
6 involved with crime.

7 (viii) The defendant has had no disciplinary actions for violent
8 activities in the last five years in which the defendant was
9 determined to be the aggressor.

10 (G) The court shall have the discretion to recall the sentence
11 and commitment previously ordered and to resentence the
12 defendant in the same manner as if the defendant had not
13 previously been sentenced, provided that the new sentence, if any,
14 is not greater than the initial sentence. The discretion of the court
15 shall be exercised in consideration of the criteria in subparagraph
16 (B). Victims, or victim family members if the victim is deceased,
17 shall be notified of the resentencing hearing and shall retain their
18 rights to participate in the hearing.

19 (H) If the sentence is not recalled, the defendant may submit
20 another petition for recall and resentencing to the sentencing court
21 when the defendant has been committed to the custody of the
22 department for at least 20 years. If recall and resentencing is not
23 granted under that petition, the defendant may file another petition
24 after having served 24 years. The final petition may be submitted,
25 and the response to that petition shall be determined, during the
26 25th year of the defendant's sentence.

27 (I) In addition to the criteria in subparagraph (F), the court may
28 consider any other criteria that the court deems relevant to its
29 decision, so long as the court identifies them on the record,
30 provides a statement of reasons for adopting them, and states why
31 the defendant does or does not satisfy the criteria.

32 (J) This subdivision shall have retroactive application.

33 (e) (1) Notwithstanding any other law and consistent with
34 paragraph (1) of subdivision (a), if the secretary or the Board of
35 Parole Hearings or both determine that a prisoner satisfies the
36 criteria set forth in paragraph (2), the secretary or the board may
37 recommend to the court that the prisoner's sentence be recalled.

38 (2) (A) The court shall have the discretion to resentence or
39 recall if the court finds that the facts described in ~~subparagraphs~~

1 ~~(A) and (B) or subparagraphs (B) and (C) clauses (i) and (ii) or~~
2 ~~clauses (ii) and (iii) exist:~~

3 ~~(A)~~

4 (i) The prisoner is terminally ill with an incurable condition
5 caused by an illness or disease that would produce death within
6 six months, as determined by a physician employed by the
7 department.

8 ~~(B)~~

9 (ii) The conditions under which the prisoner would be released
10 or receive treatment do not pose a threat to public safety.

11 ~~(C)~~

12 (iii) The prisoner is permanently medically incapacitated with
13 a medical condition that renders him or her permanently unable
14 to perform activities of basic daily living, and results in the prisoner
15 requiring 24-hour total care, including, but not limited to, coma,
16 persistent vegetative state, brain death, ventilator-dependency, loss
17 of control of muscular or neurological function, and that
18 incapacitation did not exist at the time of the original sentencing.

19 ~~The Board of Parole Hearings shall make findings pursuant to~~
20 ~~this subdivision before making a recommendation for resentence~~
21 ~~or recall to the court. This~~

22 (B) *This subdivision does not apply to a the following:*

23 (i) A prisoner sentenced to death or a term of life without the
24 possibility of parole.

25 (ii) (I) *A prisoner who was convicted of murder if the victim*
26 *was a peace officer, as defined in Section 830.1, 830.2, 830.3,*
27 *830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4,*
28 *830.5, 830.6, 830.10, 830.11, or 830.12, who was killed while*
29 *engaged in the performance of his or her duties, and the individual*
30 *knew, or reasonably should have known, that the victim was a*
31 *peace officer engaged in the performance of his or her duties.*

32 (II) *The victim was a peace officer, as defined in any of the*
33 *sections enumerated in subclause (I), or had been a peace officer,*
34 *as defined in any of those sections, and was intentionally murdered*
35 *in retaliation for the performance of his or her official duties.*

36 (III) *If the court determines that the application of this clause*
37 *violates the ex post facto clauses of the United States Constitution*
38 *or the California Constitution, the court shall only enforce its*
39 *provisions prospectively.*

1 (C) *The Board of Parole Hearings shall make findings pursuant*
2 *to this subdivision before making a recommendation for resentence*
3 *or recall to the court.*

4 (3) Within 10 days of receipt of a positive recommendation by
5 the secretary or the board, the court shall hold a hearing to consider
6 whether the prisoner's sentence should be recalled.

7 (4) Any physician employed by the department who determines
8 that a prisoner has six months or less to live shall notify the chief
9 medical officer of the prognosis. If the chief medical officer
10 concurs with the prognosis, he or she shall notify the warden.
11 Within 48 hours of receiving notification, the warden or the
12 warden's representative shall notify the prisoner of the recall and
13 resentencing procedures, and shall arrange for the prisoner to
14 designate a family member or other outside agent to be notified
15 as to the prisoner's medical condition and prognosis, and as to the
16 recall and resentencing procedures. If the inmate is deemed
17 mentally unfit, the warden or the warden's representative shall
18 contact the inmate's emergency contact and provide the information
19 described in paragraph (2).

20 (5) The warden or the warden's representative shall provide the
21 prisoner and his or her family member, agent, or emergency
22 contact, as described in paragraph (4), updated information
23 throughout the recall and resentencing process with regard to the
24 prisoner's medical condition and the status of the prisoner's recall
25 and resentencing proceedings.

26 (6) Notwithstanding any other provisions of this section, the
27 prisoner or his or her family member or designee may
28 independently request consideration for recall and resentencing
29 by contacting the chief medical officer at the prison or the
30 secretary. Upon receipt of the request, the chief medical officer
31 and the warden or the warden's representative shall follow the
32 procedures described in paragraph (4). If the secretary determines
33 that the prisoner satisfies the criteria set forth in paragraph (2), the
34 secretary or board may recommend to the court that the prisoner's
35 sentence be recalled. The secretary shall submit a recommendation
36 for release within 30 days in the case of inmates sentenced to
37 determinate terms and, in the case of inmates sentenced to
38 indeterminate terms, the secretary shall make a recommendation
39 to the Board of Parole Hearings with respect to the inmates who
40 have applied under this section. The board shall consider this

1 information and make an independent judgment pursuant to
2 paragraph (2) and make findings related thereto before rejecting
3 the request or making a recommendation to the court. This action
4 shall be taken at the next lawfully noticed board meeting.

5 (7) Any recommendation for recall submitted to the court by
6 the secretary or the Board of Parole Hearings shall include one or
7 more medical evaluations, a postrelease plan, and findings pursuant
8 to paragraph (2).

9 (8) If possible, the matter shall be heard before the same judge
10 of the court who sentenced the prisoner.

11 (9) If the court grants the recall and resentencing application,
12 the prisoner shall be released by the department within 48 hours
13 of receipt of the court's order, unless a longer time period is agreed
14 to by the inmate. At the time of release, the warden or the warden's
15 representative shall ensure that the prisoner has each of the
16 following in his or her possession: a discharge medical summary,
17 full medical records, state identification, parole medications, and
18 all property belonging to the prisoner. After discharge, any
19 additional records shall be sent to the prisoner's forwarding
20 address.

21 (10) The secretary shall issue a directive to medical and
22 correctional staff employed by the department that details the
23 guidelines and procedures for initiating a recall and resentencing
24 procedure. The directive shall clearly state that any prisoner who
25 is given a prognosis of six months or less to live is eligible for
26 recall and resentencing consideration, and that recall and
27 resentencing procedures shall be initiated upon that prognosis.

28 (f) Notwithstanding any other provision of this section, for
29 purposes of paragraph (3) of subdivision (h), any allegation that
30 a defendant is eligible for state prison due to a prior or current
31 conviction, sentence enhancement, or because he or she is required
32 to register as a sex offender shall not be subject to dismissal
33 pursuant to Section 1385.

34 (g) A sentence to state prison for a determinate term for which
35 only one term is specified, is a sentence to state prison under this
36 section.

37 (h) (1) Except as provided in paragraph (3), a felony punishable
38 pursuant to this subdivision where the term is not specified in the
39 underlying offense shall be punishable by a term of imprisonment
40 in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) (i) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed

by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(ii) The portion of a defendant's sentenced term during which time he or she is supervised by the county probation officer pursuant to this subparagraph shall be known as mandatory supervision, and shall begin upon release from custody.

(6) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(i) This section shall become operative on January 1, 2017.

SEC. 3. Section 3550 of the Penal Code is amended to read:

3550. (a) Notwithstanding any other provision of law, except as provided in subdivision (b), ~~any prisoner who~~ if the head physician of ~~the an~~ institution ~~where the~~ in which a prisoner is located incarcerated determines, as provided in this section, *that the prisoner* is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care, and that incapacitation did not exist at the time of sentencing, *the prisoner* shall be granted medical parole if the Board of Parole Hearings determines that the conditions under which ~~the prisoner~~ *he or she* would be released would not reasonably pose a threat to public safety.

(b) *This section does not alter or diminish the rights conferred under the Victim's Bill of Rights Act of 2008 (Marsy's Law).* Subdivision (a) ~~shall~~ does not apply to any ~~prisoner~~ of the following:

(1) A prisoner sentenced to death or life in prison without possibility of ~~parole or to any inmate who~~ parole.

(2) A prisoner who is serving a sentence for which parole, pursuant to subdivision (a), is prohibited by any initiative statute. ~~The provisions of this section shall not be construed to alter or diminish the rights conferred under the Victim's Bill of Rights Act of 2008: Marsy's Law.~~

(3) (A) A prisoner who was convicted of murder if the victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed while engaged in the performance of his or her duties, and the individual

1 *knew, or reasonably should have known, that the victim was a*
2 *peace officer engaged in the performance of his or her duties.*

3 *(B) The victim was a peace officer, as defined in any of the*
4 *sections enumerated in subparagraph (A), or had been a peace*
5 *officer, as defined in any of those sections, and was intentionally*
6 *murdered in retaliation for the performance of his or her official*
7 *duties.*

8 *(C) If the court determines that the application of this paragraph*
9 *violates the ex post facto clauses of the United States Constitution*
10 *or the California Constitution, the court shall only enforce its*
11 *provisions prospectively.*

12 (c) When a physician employed by the Department of
13 Corrections and Rehabilitation who is the primary care provider
14 ~~for an inmate~~ a prisoner identifies ~~an inmate~~ a prisoner that he or
15 she believes meets the medical criteria for medical parole specified
16 in subdivision (a), the primary care physician shall recommend to
17 the head physician of the institution where the prisoner is located
18 that the prisoner be referred to the Board of Parole Hearings for
19 consideration for medical parole. Within 30 days of receiving that
20 recommendation, if the head physician of the institution concurs
21 in the recommendation of the primary care physician, he or she
22 shall refer the matter to the Board of Parole Hearings using a
23 standardized form and format developed by the department, and
24 if the head physician of the institution does not concur in the
25 recommendation, he or she shall provide the primary care physician
26 with a written explanation of the reasons for denying the referral.

27 (d) Notwithstanding any other provisions of this section, the
28 prisoner or his or her family member or designee may
29 independently request consideration for medical parole by
30 contacting the head physician at the prison or the department.
31 Within 30 days of receiving the request, the head physician of the
32 institution shall, in consultation with the prisoner's primary care
33 physician, make a determination regarding whether the prisoner
34 meets the criteria for medical parole as specified in subdivision
35 (a) and, if the head physician of the institution determines that the
36 prisoner satisfies the criteria set forth in subdivision (a), he or she
37 shall refer the matter to the Board of Parole Hearings using a
38 standardized form and format developed by the department. If the
39 head physician of the institution does not concur in the
40 recommendation, he or she shall provide the prisoner or his or her

1 family member or designee with a written explanation of the
2 reasons for denying the application.

3 (e) The Department of Corrections and Rehabilitation shall
4 complete parole plans for inmates referred to the Board of Parole
5 Hearings for medical parole consideration. The parole plans shall
6 include, but not be limited to, the inmate's plan for residency and
7 medical care.

8 (f) Notwithstanding any other law, medical parole hearings shall
9 be conducted by two-person panels consisting of at least one
10 commissioner. In the event of a tie vote, the matter shall be referred
11 to the full board for a decision. Medical parole hearings may be
12 heard in absentia.

13 (g) Upon receiving a recommendation from the head physician
14 of the institution where a prisoner is located for the prisoner to be
15 granted medical parole pursuant to subdivision (c) or (d), the board,
16 as specified in subdivision (f), shall make an independent judgment
17 regarding whether the conditions under which the inmate would
18 be released pose a reasonable threat to public safety, and make
19 written findings related thereto.

20 (h) Notwithstanding any other provision of law, the board or
21 the Division of Adult Parole Operations shall have the authority
22 to impose any reasonable conditions on prisoners subject to medical
23 parole supervision pursuant to subdivision (a), including, but not
24 limited to, the requirement that the parolee submit to electronic
25 monitoring. As a further condition of medical parole, pursuant to
26 subdivision (a), the parolee may be required to submit to an
27 examination by a physician selected by the board for the purpose
28 of diagnosing the parolee's current medical condition. In the event
29 such an examination takes place, a report of the examination and
30 diagnosis shall be submitted to the board by the examining
31 physician. If the board determines, based on that medical
32 examination, that the person's medical condition has improved to
33 the extent that the person no longer qualifies for medical parole,
34 the board shall return the person to the custody of the department.

35 (1) Notwithstanding any other provision of law establishing
36 maximum periods for parole, a prisoner sentenced to a determinate
37 term who is placed on medical parole supervision prior to the
38 earliest possible release date and who remains eligible for medical
39 parole, shall remain on medical parole, pursuant to subdivision
40 (a), until that earliest possible release date, at which time the

1 parolee shall commence serving that period of parole provided by,
2 and under the provisions of, Chapter 8 (commencing with Section
3 3000) of Title 1.

4 (2) Notwithstanding any other provisions of law establishing
5 maximum periods for parole, a prisoner sentenced to an
6 indeterminate term who is placed on medical parole supervision
7 prior to the prisoner's minimum eligible parole date, and who
8 remains eligible for medical parole, shall remain on medical parole
9 pursuant to subdivision (a) until that minimum eligible parole date,
10 at which time the parolee shall be eligible for parole consideration
11 under all other provisions of Chapter 8 (commencing with Section
12 3000) of Title 1.

13 (i) The Department of Corrections and Rehabilitation shall, at
14 the time a prisoner is placed on medical parole supervision pursuant
15 to subdivision (a), ensure that the prisoner has applied for any
16 federal entitlement programs for which the prisoner is eligible,
17 and has in his or her possession a discharge medical summary, full
18 medical records, parole medications, and all property belonging
19 to the prisoner that was under the control of the department. Any
20 additional records shall be sent to the prisoner's forwarding address
21 after release to health care-related parole supervision.

22 (j) The provisions for medical parole set forth in this title shall
23 not affect an inmate's eligibility for any other form of parole or
24 release provided by law.

25 (k) (1) Notwithstanding any other provision of law, the
26 Department of Corrections and Rehabilitation shall give notice to
27 the county of commitment and the proposed county of release, if
28 that county is different than the county of commitment, of any
29 medical parole hearing as described in subdivision (f), and of any
30 medical parole release as described in subdivision (g).

31 (2) Notice shall be made at least 30 days, or as soon as feasible,
32 prior to the time any medical parole hearing or medical parole
33 release is scheduled for an inmate receiving medical parole
34 consideration, regardless of whether the inmate is sentenced either
35 determinately or indeterminately.